

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>IBRAHIM SHARQAWI</b>	:	
	:	
Plaintiff,	:	Case No. 1:20-cv-00271-PAB
	:	
v.	:	
	:	
<b>THE KIRBY COMPANY, et al.,</b>	:	Judge Pamela A. Barker
	:	
Defendants.	:	
	:	

**DEFENDANTS' MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6)**

Defendants<sup>1</sup> The Kirby Company and The Scott Fetzer Company, by and through undersigned counsel, move this Honorable Court for an order dismissing Count One (Breach of Contract), Count Five (Retaliatory Counterclaim), and Count Six (Malicious Prosecution) of Plaintiff's Amended Complaint with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff's breach of contract claim fails to allege any facts that, if proven true, demonstrate Defendants breached any of the terms delineated by the Divisional Supervisor Agreement. In addition, Plaintiff's retaliatory counterclaim and malicious prosecution claims fail as a matter of law. Accordingly, Defendants respectfully ask this Court to dismiss Counts One, Five, and Six with prejudice.

The reasons and supporting authority for this Motion are more fully set forth in the attached *Memorandum in Support of Defendants' Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(B)(6)*, which is incorporated herein by reference.

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<sup>1</sup> Kirby is an unincorporated division of The Scott Fetzer Company.

Dated: May 10, 2021

Respectfully submitted,

/s/ Ryan J. Morley

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The Kirby Company and  
The Scott Fetzer Company

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on this 10 day of May, 2021, the foregoing *Defendants' Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) and Memorandum in Support of same* was electronically filed. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this document through the Court's electronic filing system.

/s/ Ryan J. Morley

Ryan J. Morley

One of the Attorneys for Defendants,  
The Kirby Company and The Scott Fetzer  
Company